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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,868	05/29/2001	Nathan F. Raciborski	19396001600	9139
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TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER BAYARD, DJENANE M	
			ART UNIT 2141	PAPER NUMBER

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/867,868

Applicant(s)

RACIBORSKI ET AL.

Examiner

Djenane M Bayard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 29 May 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/03/02, 6/17/02</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent No. 6,275,496 to Burns et al in view of U.S. Patent No. 6,714,976 to Wilson et al.

- a. As per claims 9 and 17, Burns et al teaches a content provider for pull based intelligent caching system. Furthermore, Burns et al teaches loading a first content object from the first origin server onto the content store without a request for the first content object and loading a second content object from the second origin server onto the content store without a request for the second content object (See col. 7, lines 45-55). However, Burns et al fails to teach waiting for a triggering event; determining if a first origin server is authorized to store content in the content store; determining if a second origin server is authorized to store content in the content store;

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Wilson et al teaches a system and method for automated monitoring and management of distributed applications. Furthermore, Wilson et al teaches waiting for a triggering event (See col. 11, lines 24-36)

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate waiting for a triggering event as taught by Wilson et al in the claimed invention of Burns et al in order to start collecting data (See col. 3, lines 9-18).

3. Claims 1-3, 8, 10-11, 16, 18 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent No. 6,275,496 to Burns et al in view of U.S. Patent No. 6,714,976 to Wilson et al and further in view of U.S. patent No. 6,405,240 to Tsubone et al.

a. As per claim 1, Burns et al teaches a content provider for pull based intelligent caching system. Furthermore, Burns et al teaches loading a first content object from the first origin server onto the content store without a request for the first content object and loading a second content object from the second origin server onto the content store without a request for the second content object (See col. 7, lines 45-55). However, Burns et al fails to teach waiting for a triggering event; determining if a first origin server is authorized to store content in the content store; determining if a second origin server is authorized to store content in the content store;

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Wilson et al teaches a system and method for automated monitoring and management of distributed applications. Furthermore, Wilson et al teaches waiting for a triggering event (See col. 11, lines 24-36)

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate waiting for a triggering event as taught by Wilson et al in the claimed invention of Burns et al in order to start collecting data (See col. 3, lines 9-18).

Tsubone et al teaches a data transfer method. Furthermore, Tsubone et al teaches determining if a first origin server is authorized to store content in the content store; determining if a second origin server is authorized to store content in the content store (See col. 5, lines 14-32 and col. 6, lines 32-50).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate determining if a first origin server is authorized to store content in the content store; determining if a second origin server is authorized to store content in the content store as taught by Tsubone et al in the claimed invention of Burns et al in order to verify if the data may be transferred or not (See col. 5, lines 15-17).

b. As per claims 2 and 18, Burns et al teaches determining the popularity of the content object (See col. 7, lines 45-55).

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c. As per claims 3 and 10, Burns et al teaches the claimed invention as described above. However, Burns et al fails to teach wherein the performance of the loading steps are conditioned on the waiting step.

Wilson et al teaches wherein the performance of the loading steps are conditioned on the waiting step (See col. 11, lines 24-36)

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the performance of the loading steps are conditioned on the waiting step as taught by Wilson et al in the claimed invention of Burns et al in order to start collecting data (See col. 3, lines 9-18).

d. As per claims 8, 16 and 24. Burns et al teaches the claimed invention as described above. However, Burns et al fails to teach wherein the waiting step comprises a step of waiting for a temporal event.

Wilson et al teaches wherein waiting for a temporal event (See col. 11, lines 24-36).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate waiting for a temporal event in the claimed invention of Wilson et al in the claimed invention of Burns et al in order to start collecting data (See col. 3, lines 9-18).

e. As per claim 11, Burns et al teaches the claimed invention as described above. However, Burns et al fails to teach wherein determining if a first origin server is authorized to store content in the content store; and determining if a second origin server

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is authorized to store content in the content store.

Tsubone et al teaches a data transfer method. Furthermore, Tsubone et al teaches determining if a first origin server is authorized to store content in the content store; determining if a second origin server is authorized to store content in the content store (See col. 5, lines 14-32 and col. 6, lines 32-50).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate determining if a first origin server is authorized to store content in the content store; determining if a second origin server is authorized to store content in the content store as taught by Tsubone et al in the claimed invention of Burns et al in order to verify if the data may be transferred or not (See col. 5, lines 15-17).

4. Claims 4-5, 7, 12-13, 15, 20-21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent No. 6,275,496 to Burns et al in view of U.S. Patent No. 6,714,976 to Wilson et al, further in view of U.S. patent No. 6,405,240 to Tsubone et al as applied to claim 1 above and further in view of U.S. Patent No. 6,341,304 to Engbersen et al.

a. As per claims 4, 12 and 20, Burns et al in view of Wilson et al and further in view of Tsubone et al teaches the claimed invention as described above. However, Burns et al in view of Wilson et al and further in view of Tsubone et al fails to teach wherein the waiting step comprises at least one of the following steps of waiting for: upstream bandwidth between the first origin server and the content store to fall below a

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predetermined threshold; and upstream bandwidth between the second origin server and the content store to fall below the predetermined threshold.

Engbersen et al teaches a data acquisition and distribution processing system. Furthermore, Engbersen et al teaches wherein the waiting step comprises at least one of the following steps of waiting for: upstream bandwidth between the first origin server and the content store to fall below a predetermined threshold; and upstream bandwidth between the second origin server and the content store to fall below the predetermined threshold (See col. 4, lines 5-29)

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the waiting step comprises at least one of the following steps of waiting for: upstream bandwidth between the first origin server and the content store to fall below a predetermined threshold; and upstream bandwidth between the second origin server and the content store to fall below the predetermined threshold as taught by Engbersen et al further in view of Burns et al in view of Wilson et al and further in view of Tsubone in order to initiate the download of the requested items (See col. 4, lines 30-32).

b. As per claims 5, 13 and 21, Burns et al in view of Wilson et al and further in view of Tsubone teaches the claimed invention as described above. However, Burns et al in view of Wilson et al and further in view of Tsubone fails to teach wherein the waiting step comprises a step of waiting for upstream bandwidth into the content store to fall below a predetermined threshold.



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Engbersen et al teaches wherein the waiting step comprises a step of waiting for upstream bandwidth into the content store to fall below a predetermined threshold (See col. 4, lines 5-29).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the waiting step comprises a step of waiting for upstream bandwidth into the content store to fall below a predetermined threshold as taught by Engbersen et al in the claimed invention of Burns et al in view of Wilson et al and further in view of Tsubone in order to initiate the download of the requested items (See col. 4, lines 30-32).

c. As per claims 7, 15 and 23, Burns et al in view of Wilson et al and further in view of Tsubone teaches the claimed invention as described above. However, Burns et al in view of Wilson et al and further in view of Tsubone fails to teach wherein the waiting step comprises a step of waiting for upstream bandwidth utilization from a client computer to the content store to fall below a predetermined threshold.

Engbersen et al teaches wherein the waiting step comprises a step of waiting for upstream bandwidth utilization from a client computer to the content store to fall below a predetermined threshold (See col. 4, lines 5-29).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the waiting step comprises a step of waiting for upstream bandwidth utilization from a client computer to the content store to fall below a predetermined threshold as taught by Engbersen et al in the claimed invention of

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Burns et al in view of Wilson et al and further in view of Tsubone in order to initiate the download of the requested items (See col. 4, lines 30-32).

5. Claims 6, 14 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent No. 6,275,496 to Burns et al in view of U.S. Patent No. 6,714,976 to Wilson et al, further in view of U.S. patent No. 6,405,240 to Tsubone et al as applied to claim 1 above and further in view of U.S. Patent No. 6,775,828 to Feinleib et al.

a. As per claims 6, 14 and 22, Burns et al in view of Wilson et al and further in view of Tsubone fails to teach wherein the waiting step comprises a step of waiting for connection to the network.

Feinleib et al teaches a delayed uploading of user registration data. Furthermore, Feinleib et al teaches wherein the waiting step comprises a step of waiting for connection to the network (See col. 9, lines 20-29).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the waiting step comprises a step of waiting for connection to the network as taught by Feinleib et al in the claimed invention of Burns et al in view of Wilson et al and further in view of Tsubone in order to upload the information (See col. 9, lines 27-29)

*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,553, 417 to Gampper teaches an Ethernet data access acknowledgement applet and method.

U.S. Patent No. 5,978,381 to Perlman et al teaches a transmitting high bandwidth network content on a low bandwidth communications channel during off peak hours.

U.S. Patent No. 6, 442, 598 to Wright et al teaches a system and method for delivering web content over a broadcast medium.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M Bayard whose telephone number is (703) 305-6606. After October 25, 2004, the new telephone number will be (571) 272-3878. The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

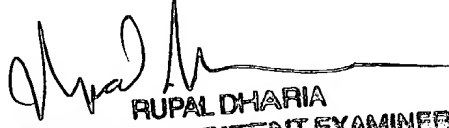
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Djenane Bayard

Patent Examiner

  
RUPAL DHARIA  
SUPERVISORY PATENT EXAMINER